



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

DEC 23 2005

Ref: 8ENF-W-NP

**CERTIFIED MAIL: 7003-2260-0001-7779-1732**  
**RETURN RECEIPT REQUESTED**

Mr. Dallas Schott  
McLaughlin Livestock Auction  
and Corson County Feeders  
400 Salebarn Road  
McLaughlin, SD 57642

Re: Findings of Fact and Order for  
Compliance under §§ 308, 309 of the  
Clean Water Act, 33 U.S.C. §§1318, 1319

Dear Mr. Schott:

Enclosed is a United States Environmental Protection Agency ("EPA") Region 8 Order for Compliance ("Order") issued to McLaughlin Livestock Auction, Inc. and Corson County Feeders, Inc. for violations of the federal Concentrated Animal Feeding Operation ("CAFO") regulations found in 40 C.F.R. § 122.23 and the Feedlots Point Source Categorical Standards regulations found in 40 C.F.R. part 412. The Order specifies the nature of the violations under the Clean Water Act, as amended, 33 U.S.C. § 1251, *et seq.* (the "Act"). The authority for such action is provided to EPA under section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

The Order describes the actions necessary for McLaughlin Livestock Auction, Inc. and Corson County Feeders, Inc. to achieve compliance with the Act. The Order requires you to notify EPA, in writing, within five (5) days of receipt whether you intend to comply with the Order. The Order also requires McLaughlin Livestock Auction, Inc. and Corson County Feeders, Inc. to perform specific tasks to bring them into compliance with their CAFO permit number SD-0034646, and submit information in regards to their compliance with the Act and their CAFO permit.

The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the Act and any Orders issued thereunder. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil or criminal action, an administrative penalty action, and/or debarment from Federal contracts and/or loans for any noncompliance with the Act or with an Order issued pursuant to the Act. Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or initiation of civil or criminal actions in the U.S. District Court under sections 309(b), (c) and (g) of the Act for the violations cited in the Order.

Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of said Order. The Order is to become effective the date of receipt. If you would like a conference with EPA, or if you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to McLaughlin Livestock Auction, Inc. and Corson County Feeders, Inc.'s compliance with the Act, the most knowledgeable people on my staff regarding these matters are Jennifer Meints, Environmental Engineer, at (303) 312-6334, or Marc Weiner, Enforcement Attorney, at (303) 312-6913.

Sincerely,



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

cc: Bob Buffalo Boy, Director of Environmental Department



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2005 DEC 23 AM 10:57

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF:

McLaughlin Livestock Auction, Inc.  
Corson County Feeders, Inc.

Respondents

DOCKET NO. CWA-08-2006-0007

FINDINGS OF VIOLATION  
AND CONCLUSIONS OF LAW  
& ORDER FOR COMPLIANCE

INTRODUCTION

This administrative order for compliance is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by section 309(a) of the Federal Water Pollution Control Act (often referred to as the Clean Water Act)("the Act"), 33 U.S.C. § 1319(a), and its implementing regulations, as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. McLaughlin Livestock Auction, Inc. and Corson County Feeders, Inc. ("Respondents") are corporations under the laws of the State of South Dakota, with their principal place of business at 400 Salebarn Road in McLaughlin, South Dakota 57642.
2. Respondents are "persons" as that term is defined in section 502(5) of Act, 33 U.S.C. § 1362(5).

3. Respondents are owners and/or operators of the Concentrated Animal Feeding Operation (CAFO), McLaughlin Livestock Auction and Corson County Feeders, at 400 Salebarn Road in McLaughlin, South Dakota 57642, under 40 C.F.R. § 122.2.
4. On July 27, 2005, EPA representatives conducted an inspection of Respondents' facility located at 400 Salebarn Road in McLaughlin, South Dakota 57642.
5. On the date of the inspection, Dallas Schott stated to EPA inspectors that the facility was confining approximately 2,300 slaughter or feeder cattle, and the facility has a capacity for 10,000 slaughter or feeder cattle. The EPA inspectors confirmed that animals are confined for a total of 45 days or more in a 12-month period, and that neither crops, vegetation, forage growth, nor post-harvest residues are sustained during the normal growing season over any portion of the feedlot.
6. Under 40 C.F.R. § 122.23(b)(4), any lot or facility where more than 1000 mature beef cattle have been, are, or will be stabled or confined and fed or maintained for at least 45 total days in any 12-month period, and where crops, vegetation forage growth, or post harvest residues are not sustained in the normal growing period over any portion of the lot or facility is a "large concentrated animal feeding operation" or a "Large CAFO."
7. Respondent's feedlot is a CAFO and a Large CAFO, as those terms are defined in 40 C.F.R. § 122.23(b)(2) and (4).
8. Pursuant to 40 C.F.R. § 122.23(a), any facility meeting the definition of a CAFO set forth in 40 C.F.R. § 122.23(b) is a point source that requires a National Pollutant Discharge Elimination System (NPDES) permit pursuant to section 402 of the Act, 33 U.S.C. § 1342 for discharges to "waters of the United States."

9. The term “discharge” is defined in 40 C.F.R. § 122.2 as the “discharge of a pollutant,” which in turn is defined in 40 C.F.R. § 122.2 and section 502(12) of the Act, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
10. The term “pollutant” includes agricultural waste, according to section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.
11. The term “navigable waters” is defined as the “waters of the United States”, according to section 502(7) of the Act, 33 U.S.C. § 1362(7).
12. The term “waters of the United States” is defined to include various types of waters including, but not limited to, interstate waters, their tributaries, and wetlands adjacent to either interstate waters or their tributaries. 40 C.F.R. § 122.2.
13. An unnamed ditch is located adjacent to the Respondent’s facility, along its north side.
14. The unnamed ditch flows to Oak Creek, which is approximately one mile from the facility.
15. Oak Creek is a tributary of the Missouri River.
16. The Missouri River is a “navigable water” and a “water of the United States” as those terms are defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
17. Oak Creek and the unnamed ditch adjacent to the Respondent’s facility along its north side are a “waters of the United States” as those terms are defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
18. Respondents were issued an NPDES CAFO permit SD-0034606 on November 30, 2002 by the EPA.

19. During the July 27, 2005 inspection, EPA inspectors discovered Respondents had not developed and submitted to EPA a Nutrient Management Plan (NMP) and implementation schedule 180 days from issuance of the permit, as required by Section I.I.1.b. of Respondents' permit SD-0034606.

20. During the July 27, 2005 inspection, EPA inspectors discovered Respondents had not been inspecting and/or documenting inspections on a monthly basis, and daily during and after precipitation events, as required by Section I.D. of Respondents' permit SD-034606.

21. During the July 27, 2005 inspection, EPA inspectors discovered that the CAFO had discharged to the unnamed ditch to the north of the facility, and the Respondents had not notified EPA and the Standing Rock Sioux Tribe within the 24-hour notification period, nor did they submit written notification 5 days following the discharge, as required by Section I.C.2. of Respondents' permit SD-0034606.

22. During the July 27, 2005 inspection, EPA inspectors discovered that the CAFO had discharged to the unnamed ditch to the north of the facility. The inspectors also noted the CAFO did not have containment structures, nor did they have design calculations to show the facility was properly designed, constructed, maintained and operated to contain all process generated wastewater resulting from the operation of a CAFO (such as contact water, wash water, parlor water, watering system overflow, etc.), plus all run-off from a 25-year, 24 hour rainfall event for the CAFO, as required by Section I.C.1.A. of Respondents' permit SD-0034606.

### **COUNT ONE**

(Failure to develop an NMP and Implementation Schedule)

23. At the time of the July 27, 2005 EPA inspection, Respondents had failed to develop and submit to EPA 180 days from issuance of the permit an NMP and implementation schedule, as required by Respondents' permit SD-0034606 Section I.I.1.b.

24. Respondents' failure to develop and submit to EPA an NMP and implementation plan 180 days from issuance of the permit, as required by the permit, constitutes violations of the Clean Water Act 33 U.S.C. §§ 1311, 1318 and 1342, and Respondents' permit SD-034606 Section I.I.1.b.

### **COUNT TWO**

(Failure to conduct inspections)

25. During the July 27, 2005 inspection, EPA inspectors discovered Respondents had not been inspecting and/or documenting inspections on a monthly basis, and daily during and after precipitation events, as required by Section Section I.D. of Respondents' permit SD-034606.

26. Respondents' failure to conduct inspections as required by the permit constitutes violations of the Clean Water Act 33 U.S.C. §§ 1311, 1318 and 1342, and Respondents' permit SD-034606 Section I.D.

### **COUNT THREE**

(Failure to notify of discharge)

27. During the July 27, 2005 inspection, EPA inspectors discovered that the CAFO had discharged to the unnamed ditch to the north of the facility, and the Respondents had not notified EPA and the Standing Rock Sioux Tribe within the 24-hour notification period, nor did they submit written notification 5 days following the discharge, as required by Section I.C.2. of Respondents' permit SD-0034606.

28. Respondents' failure to notify EPA and the Standing Rock Sioux Tribe of a discharge as required by the permit constitutes violations of the Clean Water Act 33 U.S.C. §§ 1311, 1318 and 1342, and Respondents' permit SD-0034606 Section I.C.2.

#### **COUNT FOUR**

(Failure to properly design, construct, maintain and operate a facility prior to discharge)

29. During the July 27, 2005 inspection, EPA inspectors discovered that the CAFO had discharged to the unnamed ditch to the north of the facility. The inspectors also noted the CAFO did not have containment structures, nor did they have design calculations to show the facility was properly designed, constructed, maintained and operated to contain all process generated wastewater resulting from the operation of a CAFO (such as contact water, wash water, parlor water, watering system overflow, etc.), plus all run-off from a 25-year, 24 hour rainfall event for the CAFO, as required by Section I.C.1.A. of Respondents' permit SD-0034606.

30. Respondents' failure properly design, construct, maintain and operate a facility prior to discharge as required by the permit constitutes violations of the Clean Water Act 33 U.S.C. §§ 1311 and 1342, and Respondents' permit SD-0034606 Section I.C.1.A.

#### **COMPLIANCE ORDER**

Pursuant to the authority of sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, Respondent is ordered to:

1. Within five (5) days after receipt of this Compliance Order ("Order"), give written notice to EPA of the Respondents' intent to comply with the requirements of the Order.
2. Immediately conduct daily visual monitoring of all potential sources of pollutant discharges to navigable waters from the CAFO. Monitoring locations shall include, but are not limited to, areas with direct access of dairy cattle to any surface waters, areas of potential or



actual discharges from fields subject to land application of wastes, confinement areas, silage piles, or waste storage ponds.

3. Immediately develop and maintain a monitoring log containing the following information for each area monitored as stated in the preceding paragraph: the date and time of the visual observation, an indication of whether or not a discharge was observed, and the initials of the person making the observation. Respondent shall maintain the monitoring records at the CAFO for at least three (3) years after the date of this Order and make them available for inspection or copying upon request by an authorized representative of EPA or the Tribe. The operator of the CAFO subject to this Order shall know the location of the records.

4. Immediately conduct daily monitoring of precipitation using a rain gauge. The precipitation should be recorded and maintained with the monitoring records.

5. For each observed discharge of any agricultural waste or other pollutant(s) from its feedlot that may enter any navigable water, Respondent shall:

- a. Within two (2) hours of the discharge, sample the discharge in accordance with the methods specified in 40 C.F.R. part 136, and submit the sample to a laboratory to be analyzed in accordance with the sample holding times and methods of analysis specified in 40 C.F.R. part 136 for fecal coliform, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Ammonia, Nitrate-Nitrite, and Total Suspended Solids;
- b. Submit to EPA within fifteen (15) days of the discharge a written report containing:
  - 1) date and time of the discharge;
  - 2) location of the discharge;
  - 3) origin of the discharge;
  - 4) estimated volume of discharge;

- 5) daily rainfall measurements for 30-days prior to the discharge event;
- 6) sample analysis results of the discharge;
- 7) steps taken to prevent reoccurrence of the discharge.

6. Within thirty (30) days from receipt of this Order, submit to EPA a compliance schedule.

The compliance schedule shall include all necessary remaining actions the Respondent must take to demonstrate the facility is designed, constructed, maintained and operated to contain all process generated wastewater resulting from the operation of the CAFO (such as contact water, wash water parlor water, watering system overflow, etc.), plus all run-off from a 25-year, 24 hour rainfall event for the CAFO, as required by Section I.C.1.A. of Respondents' permit, and the date by which each action will be taken, including the date by which the complete application will be submitted. For any necessary construction, the schedule is to include:

- 1) the date plans will be completed;
- 2) the date construction will begin;
- 3) the date construction will be 50% complete;
- 4) the date construction will be complete.

7. The compliance schedule will be incorporated into this Order upon its approval by EPA (with or without modifications).

8. Within thirty (30) days from receipt of this Order, submit to EPA a compliance schedule.

The compliance schedule shall include all necessary remaining actions the Respondent must take to submit a complete NMP for the CAFO to EPA, and the date by which each action will be taken, including the date by which the complete NMP will be submitted. The NMP is to include all requirements as stated in Respondents' permit SD-0034606 Section I.I.1.

9. The compliance schedule will be incorporated into this Order upon its approval by EPA (with or without modifications).

10. Submit to EPA monthly reports of its efforts to achieve compliance with this Order, postmarked by the 10<sup>th</sup> day of every month, until EPA notifies the Respondents, in writing, that this Order has been closed. The reports shall include an update on the progress of the construction of the containment facility and local rainfall amounts for the previous month, as well as copies of any inspections that have been performed.
11. Submit to EPA within forty-five (45) days from the receipt of this Order a legal description of the acreage the Respondents have been land-applying manure.
12. Submit to EPA within forty-five (45) days from the receipt of this Order any information the CAFO has on past discharges that have occurred from the facility, including, but not limited to, photo documentation, dates and times of discharges, estimates of quantity of discharge, any analytical sampling results of the discharge, and precipitation amounts.
13. The provisions of this Compliance Order shall apply to and be binding upon the Respondents, their officers, directors, agents, trustees, servants, employees, successors, and assigns.
14. Respondents are hereby required to notify any potential buyer of the facility of the requirements of the Compliance Order.

### CONTACTS FOR SUBMISSIONS

Submissions required by this Compliance Order shall be sent to:

U.S. Environmental Protection Agency  
Region 8 (8ENF-W-NP)  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2408  
Attn: Jennifer Meints

### RESERVATION OF RIGHTS

Nothing in this Order shall be construed to relieve Respondents of the requirement to obtain and comply with any NPDES permit or other applicable requirements of other federal, state, or local law. EPA reserves the right to take enforcement action as authorized by law for any violation of this Order, and for any other legal requirement.

Violation of this Order, failure to submit the required information, or making a false statement under section 308 of the Act, may be punishable by the imposition of a fine and/or imprisonment, and/or a civil action for appropriate relief in the district court of the United States, including a permanent or temporary injunction.

The effective date of this Order shall be the date of receipt by Respondent.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Date: 12/22/05



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice